

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE ORDER

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**IN THE MATTER OF:**

**BOERDERIJ DE VELDHOEK,  
LLC  
BUTLER COUNTY, IOWA  
ID # 64878**

**ADMINISTRATIVE ORDER  
NO. 2012-AFO-16**

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**TO: Boerderij De Veldhoek, LLC  
17442 HWY 3A  
Allison, IA 50602**

### I. SUMMARY

This Administrative Order (Order) requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Any questions or response regarding this Order should be directed to:

**Relating to technical requirements:**

Jeremy Klatt  
IDNR Field Office #2  
2300 15<sup>th</sup> St., SW  
Mason City, IA 50401  
Ph: (641)424-4073  
Fax: (641)424-9342  
**Appeal, if any, to:**  
Director  
Iowa Department of Natural Resources  
502 E. 9th Street  
Des Moines, IA 50319-0034

**Relating to legal requirements:**

Randy Clark, Attorney II  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph: (515) 281-8891

**Payment of penalty to:**

Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Attn: Randy Clark

### II. JURISDICTION

This Order is issued pursuant to Iowa Code §455B.175(1) which authorizes the Director to issue any Order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1, Iowa Code Chapter 459 or Iowa Code Chapter 459B and the rules adopted or permits issued pursuant thereto; and Iowa Code §455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Boerderij De Veldhoek, LLC owns a dry-bedded confinement dairy cattle operation located in the N½ of the NW¼ of Section 32, T92N, R17W (West Point Township), Butler County, Iowa. As of September 8, 2011, the operation had 250 dairy cows in a confinement building, approximately 50 dairy heifers in an open feedlot and 20 dairy cows on pasture.

2. On April 9 and 30, 2010, Department Field Office #2 (FO2) investigated a complaint regarding improper manure stockpiling at this operation. FO2 staff summarized observations during the investigation in a letter dated May 4, 2010, to the manager of the operation, Jeremy Vander Vegt. The letter noted that a considerable amount of manure was stockpiled at the site, and informed the operation that Iowa law prohibits stockpiling manure within 400 feet of a water source and requires the manure to be land-applied no later than 6 months after it is stockpiled.

3. On September 8, 2011, FO2 staff investigated a complaint regarding manure stockpiling at this operation and the land application of manure from this operation. Manure had been surface applied to a field in NW¼ of the SW¼ of Section 32, West Point Township, within 200 feet of a water source and not incorporated on the same date as the manure was applied. Most of the manure stockpiles were located more than 400 feet from a water source but a stockpile north of the confinement building was less than 300 feet away from a water source. Jeremy Vander Vegt stated that the north stockpile would be moved to an off-site location in the near future, that most of the stockpiled manure was removed from the confinement building in mid-August, and that he planned to land-apply all stockpiled manure during the upcoming fall. By letter dated September 15, 2011, FO2 required the operation to move the north stockpile at least 400 feet from a water source by October 1, 2011 and to land-apply all currently stockpiled manure by February 1, 2011.

4. On October 6, 2011, FO2 staff returned to the operation and observed that manure was still located north of the confinement building in the same location observed on September 8, 2011, less than 400 feet from the water source. Jeremy Vander Vegt explained that he had removed the manure previously stockpiled at that location and later moved some manure from south of the confinement building to this location. FO2 staff informed Jeremy Vander Vegt that manure could not be stockpiled at this location, even for short time periods. Jeremy Vander Vegt stated that the stockpile too close to the water source would be removed by October 9, 2011, and that he still planned to land-apply all stockpiled manure yet that fall.

5. FO2 staff returned to the operation on December 9, 2011. Much of the stockpiled manure observed on October 6, 2011 remained but some manure had been removed. Manure was no longer stockpiled north of the confinement building, however three new manure stockpiles were observed. One of those stockpiles, located immediately west of the confinement building, was less than 400 feet from a water source. Upon being reminded by FO2 staff of the six month requirement to land-apply stockpiled manure, Jeremy Vander Vegt stated that he planned to do so during the upcoming winter months.

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6. Another visit to the operation by FO2 staff on February 16, 2012, revealed that many of the manure stockpiles observed on September 8, 2011, remained. In addition, the manure stockpile within 400 feet of the water source observed on December 9, 2011, remained. Jeremy Vander Vegt explained that time devoted to unforeseen legal issues had prevented him from land-applying the manure; he stated that he needed to borrow a manure spreader from an acquaintance but hoped to begin hauling manure that week. By letter to the operation dated February 28, 2012, FO2 summarized the February 16, 2012, site visit and notified the operation that it violated Iowa law by failing to land apply stockpiled manure within 6 months after the manure was stockpiled. The letter continued that the matter would be referred for enforcement action if the manure stockpiles documented in September, 2011 were not land-applied by April 1, 2012.

7. FO2 staff returned to the operation on April 6, 2012. While much of the stockpiled manure documented in September, 2011 had been removed, some remained south of the east end of the confinement building. In addition, the manure stockpile at the west end of the confinement building observed on December 9, 2011 and February 16, 2012, located within 400 feet of the water source, remained; using GIS software the distance from the water source was determined to be 250 feet. By letter from FO2 dated April 25, 2012, the operation was informed that the matter would be referred for enforcement action due to violation of the separation distance and 6 month retention requirements.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code §§459.103 and 459B.104 require the Environmental Protection Commission (Commission) to adopt rules related to animal feeding operations and dry bedded confinement feeding operations. The Commission has done so at 567 IAC Chapter 65.

2. Iowa Code §459B.307(1)(a)(1) and 567 IAC 65.11(8) prohibit the placement of manure stockpiles within 400 feet of a designated area. "Designated area" as defined in 567 IAC 65.1 includes water sources. The foregoing facts document that these provisions were violated.

3. Iowa Code §459B.307(2) and 567 IAC 65.2(3)"d"(3) require that stockpiled dry bedded manure be removed and applied within six months after the manure is stockpiled. The foregoing facts indicate that this provision has been violated.

4. Iowa Code §459.314 and 567 IAC 65.3(3)"g" prohibit the application of manure within 200 feet of a designated area unless the manure is land-applied by injection or incorporation on the same date as the manure was land-applied. "Designated area" as defined in 567 IAC 65.1 includes water sources. The foregoing facts document that these provisions were violated.

**V. ORDER**

THEREFORE, the Department hereby orders Boerderij De Veldhoek, LLC to do the following:

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1. Comply with all manure stockpiling and land application requirements.
2. Within 30 days of the date the Director signs this Order, provide written documentation to Department Field Office #2 that a manure spreader is continually and immediately accessible for use at this operation.
3. Pay an administrative penalty of \$8,500.00. The penalty shall be paid to the Department within 30 days of receipt of this Order, subject to appeal rights set forth in Section VII.

**VI. PENALTY**

1. Iowa Code §§455B.191, 459.603 and 459B.402 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of water quality laws.

2. Iowa Code §455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to these provisions the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with an administrative penalty. The administrative penalty is determined as follows:

a. Economic Benefit. Boerderij De Veldhoek, LLC saved money by delaying the land application of stockpiled manure for many months and avoided the need to purchase manure application equipment. It is estimated that at least \$500.00 was saved, so that amount is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. Failure to comply with separation distance requirements pertaining to manure application and stockpiling threaten water quality. Therefore, \$3,000.00 is assessed for this factor.

c. Culpability. This operation was repeatedly informed and directed to comply with manure stockpiling requirements, yet it continued to violate these requirements over an extended period. Specifically, FO2 staff observed violations of stockpiling requirements on at least four separate occasions after directing the operation to comply with the requirements. Therefore, \$5,000.00 is assessed for this factor.


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**VII. APPEAL RIGHTS**

Pursuant to Iowa Code §455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC Chapter 7, a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC Chapter 7.

**VIII. NONCOMPLIANCE**

Compliance with section V. ORDER of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code §455B.191.

  
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CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 4<sup>th</sup> day of  
October, 2012.